

U.S. Department of  
Homeland Security

United States  
Coast Guard



Office of the Administrative Law Judge  
United States Coast Guard

U.S. Courthouse  
601 25<sup>th</sup> Street, Suite 508A  
Galveston, Texas  
Staff Symbol: ALJ-HOU  
Phone: 409-765-1300  
Fax: 409-765-1303

Email: Tommy.B.Cantrell@uscg.mil

5720

15 April 2019

Taylor Amarel  
MuckRock News  
411A Highland Ave  
Somerville, MA  
55549-68806217@requests.muckrock.com

RE: DHS FOIA Appeal number 2018-HQAP-00327; FOIA Request Number: 2018-HQFO-01033

Dear Mr Amarel:

This letter concerns your appeal of the Department of Homeland Security (DHS) Privacy Office's (PRIV) adverse response to your FOIA request 2018-HQFO-01033. In your initial request on June 1, 2018, you sought:

Emails sent to, from, or copied to: Theodore J. Garrish, from January 1, 2016 to Present Day containing any of the following non-case-sensitive key-string "liberals", "kushner", "Giuliani", "Mastroianni", "Elliott Broidy", "Mark Siffin", "EB-5" "George Nader", "erik Prince", "alias", "FOIA", "Israel" or "whistleblower" (Date Range for Record Search: From 1/1/2016 [t]o 6/1/2018).

PRIV considered your request overbroad and asked you to resubmit your request containing a reasonable description on June 1, 2018. You refused and exercised your right to file this appeal in August 2018.

Pursuant to a memorandum of agreement, the United States Coast Guard Office of the Chief Administrative Law Judge is reviewing FOIA appeals for the Department of Homeland Security General Counsel's office. Therefore, the Office of the Chief Administrative Law Judge hereby renders the official appeal decision on behalf of the Department of Homeland Security.

Upon review of the file, I am **REMANDING** this case for corrective processing.

Pursuant to the Freedom of Information Act, a FOIA request must reasonably describe the records sought. 5 U.S.C. § 552(a)(3)(A). A request is sufficient if it enables a professional agency employee familiar with the subject area to locate the record with a "reasonable amount of effort." Truitt v. Dep't of State, 897 F.2d 540 (D.C. Cir. 1980). Federal courts explain that "[t]he rationale for this rule is that FOIA was not intended to

reduce government agencies to full-time investigators on behalf of requestors, or to allow requestors to conduct ‘fishing expeditions’ through agency files.” For example, a FOIA request is unreasonable if it requires the agency employees to have “clairvoyant capabilities” to discern the requestor’s needs or requires countless number of hours seeking needles in a bureaucratic haystack.

On the other hand, FOIA does not require that documents be identified with exacting particularities or be models of clarity. *Conservation Force v. Ashe*, 979 F. Supp. 2d 90, 101 (D.D.C. 2013). Rather, requested records must only be “reasonably describe[d].” 5 U.S.C. § 552(a)(3)(A).

After reviewing this appeal, I find it difficult to see how you could more specifically describe the documents you are looking for since the Agency could identify the emails using the key words and dates you provided. Therefore, I am **REMANDING** this matter to DHS for corrective processing. DHS, or the responsive Agency, shall have 60 days to provide you with an updated response.

Please note, nothing in this letter prevents DHS, or a responsive Agency after conducting a search, from asserting any privileges applicable under FOIA. Neither does this letter prevent DHS from informing you it does not have responsive documents, if no documents are discovered after a reasonable search. Moreover, because you did not identify which specific office or Agency that might have responsive documents, the Agency may decide, pursuant to 6 C.F.R. § 5.3 which office may have responsive documents before conducting the search, i.e., DHS need not search each and every Agency in the Department, unless it determines each Agency might have responsive materials.

Once the Agency conducts the search, it will provide you with an updated letter within sixty (60) days of this decision. If, however, you do not receive an updated response from DHS, I, or another attorney, will provide you with a letter granting final Agency action so that you may enter federal court pursuant to 5 U.S.C. §552(a)(4)(B).

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974.

If you wish to contact OGIS, you may email them at [ogis@nara.gov](mailto:ogis@nara.gov) or call 1-877-684-6448.

Sincerely,

Tommy B. Cantrell  
Attorney-Advisor  
United States Coast Guard  
United States Department of Homeland Security

Copy : FOIA Officer

Sent: Via first class mail to the above address.